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| APPLICATION NO.                       | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------|-------------|----------------------|---------------------|------------------|
| 10/040,893                            | 01/02/2002  | Scott Kaminski       | 312/14              | 8882             |
| 27538                                 | 7590        | 10/18/2005           | EXAMINER            |                  |
| KAPLAN GILMAN GIBSON & DERNIER L.L.P. |             |                      | LEUNG, CHRISTINA Y  |                  |
| 900 ROUTE 9 NORTH                     |             |                      | ART UNIT            | PAPER NUMBER     |
| WOODBIDGE, NJ 07095                   |             |                      | 2633                |                  |

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/040,893

Applicant(s)

KAMINSKI ET AL.

Examiner

Christina Y. Leung

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 10-18 and 20-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☒ Claim(s) 5-9 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 24 June 2002.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Applicants' election of Group I, claims 1-9 and 19, in the reply filed on 29 September 2005 is acknowledged. Because Applicants did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

2. Claims 10-18 and 20-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 29 September 2005 (see note above regarding election without traverse).

### *Information Disclosure Statement*

3. The information disclosure statement filed 24 June 2002 fails to comply with the provisions of 37 CFR 1.97, 1.98 and MPEP § 609 because the information disclosure statement does not list any references and is essentially blank. It has been placed in the application file, but the information referred to therein has not been considered as to the merits.

Examiner respectfully notes that the information disclosure statement appears to have been reproduced incorrectly, resulting in a missing portion of the paper. It appears that the "missing" portion may have been a citation of one or more non-patent literature documents. However, in any case, no copy of such a publication is currently present in the file. 37 CFR 1.98(a)(2) requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed.

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Applicants are advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

### *Claim Objections*

4. Claims 5-9 and 19 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to only one set of other claims in the alternative only. See MPEP § 608.01(n).

Examiner notes that Applicants amended claim 9 in a preliminary amendment filed 13 March 2002 to correct its multiple dependency. However, claim 5, on which claims 6-9 and 19 directly or indirectly depend, improperly refers to two sets of claims ("claims 1 or 3" and "claims 2 or 4").

Accordingly, the claims have not been further treated on the merits.

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Bala et al. (US 6,335,992 B1).

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Regarding claims 1 and 2, Bala et al. disclose an  $n \times m$  switch module for use in the first stage 111-1...K or the final stage 131-1...K of an  $N \times N$  multi-stage optical switching architecture (Figure 1C), comprising:

sufficient input and output ports to satisfy the Clos nonblocking criteria (column 4, lines 13-16; column 5, lines 47-50);

at least one extra input port (column 6, lines 5-8);

at least one extra output port (column 6, lines 5-8);

where the extra input and output ports are unallocated (column 6, lines 6-8).

Regarding claim 3, Bala et al. disclose that further additional spare ports may be added to a  $n \times m$  switch module for use in the first stage (i.e., one of switch modules 111-1...K as shown in Figure 1C) such that  $n = m$  (Bala et al. specifically disclose that the number of inputs in switch module 111 may equal the number of outputs; column 6, lines 3-4).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bala et al.

Regarding claim 4, Bala et al. disclose a system as discussed above with regard to claim 2, including a switch module 131 in a final stage of an  $N \times N$  multi-stage optical switching architecture with extra input and output ports (Figure 1C; column 6, lines 5-8). Bala et al. disclose that further additional spare ports may be added to a  $n \times m$  switch module 111 for use in

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the *first* stage of a  $N \times N$  multi-stage optical switching architecture such that  $n = m$  (as discussed above with regard to related claim 3, the number of inputs in first-stage switch module 111 may equal the number of outputs; column 6, lines 3-4). They do not specifically disclose that a *final*-stage switch module 131 may have spare ports such that  $n = m$ .

However, as already noted with respect to claim 2, Bala et al. disclose a final stage  $n \times m$  switch module 131 with at least one extra input port and at least one extra output port, and Bala et al. generally disclose that a plurality of extra input and output ports in switch module 131 may be provided. It would have been obvious to a person of ordinary skill in the art to provide further extra ports such that  $n = m$  in the final-stage  $n \times m$  switch module disclosed by Bala et al. as an engineering design choice of a number of extra ports to be used as testing or service channels (or other purposes; see column 6, lines 5-8). The claimed differences exist not as a result of an attempt by Applicants to solve an unknown problem but merely amount to the selection of expedients known as design choices to one of ordinary skill in the art.

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christina Y. Leung whose telephone number is 571-272-3023.

The examiner can normally be reached on Monday to Friday, 6:30 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on 571-272-3022. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christina Y Leung  
Christina Y Leung  
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